

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESAL PRICE LITIGATION

MDL No. 1456

THIS DOCUMENT RELATES TO:

CIVIL ACTION: 01-CV-12257-PBS

State of Nevada v. American Home Products, et al.,
CA No. 02-CV-12086-PBS (Nevada II), and

Judge Patti B. Saris

State of Montana v. Abbott Labs., Inc., et al.,
Cause No. CV-02-09-H-DWM (D. Mont.)

**[LEAVE TO FILE GRANTED ON
SEPTEMBER 12, 2006]**

**REPLY IN SUPPORT OF THE STATES' SECOND MOTION
TO AMEND CASE MANAGEMENT ORDER NO. 25**

Defendants' opposition to the State's Second Motion to Amend Case Management Order No. 25 fails to address one of the most significant reasons to postpone summary judgment briefing in the Montana and Nevada cases until January 2007, after the Class 2 trial. In the upcoming months, the Court will rule on the meaning of Average Wholesale Price ("AWP"). The issue has been briefed extensively in the Class case. The Court's ruling holds implications for all pending cases, including the State cases. It would be an improvident use of time and resources to compel the parties to brief summary judgment issues in the State cases now when the contours of the questions to be decided will be dictated by the Court's impending ruling on the meaning of AWP. Deferring summary judgment until after the expected ruling will prejudice no one and will promote the ultimate goal of case efficiency.

For this reason, and the reasons set forth more fully in the States' Second Motion to Amend CMO No. 25, the Montana and Nevada case schedules should remain synchronized *and* summary judgment briefing should be postponed until January 2007, after the Class 2 trial.

By /s/ Steve W. Berman

DATED: September 6, 2006

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CERTIFICATE OF SERVICE

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing, **REPLY IN SUPPORT OF THE STATES' SECOND MOTION TO AMEND CASE MANAGEMENT ORDER NO. 25** to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on September 6, 2006 a copy to LexisNexis File & Serve for Posting and notification to all parties.

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